

Appeal from the decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 53035 through I MC 53051.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located after Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each year following the calendar year in which the claim is located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim and renders the claim void. The recordation requirement of sec. 314(a) of the Federal Land Policy and Management Act of 1976 that evidence of assessment work or notice of intention to hold mining claims be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an

instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with the authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Paul E. Garrett, president of Minexco, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Minexco, Inc., appeals the Idaho State Office, Bureau of Land Management (BLM), decision of October 28, 1982, which declared the MX 1, MX 2 fraction, MX 3, MX 4 fraction, MX 5 fraction, MX 6, MX 7 fraction, MX 8 fraction, MX 9 fraction, MX 10 fraction, MX 11, MX 12 fraction, MX 13, MX 14 fraction, MX 15 fraction, MX 16 fraction, and MX 17 fraction lode mining claims, I MC 53035 through I MC 53051, abandoned and void because no proof of labor was filed with BLM in 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. ¹/ The decision also returned, unrecorded, the 1982 proof of labor, stating that as the claims are considered abandoned, the 1982 proof of labor cannot be accepted. The claims had been located in August 1980, and were timely recorded with BLM.

Appellant states that after recording the 1981 proof of labor in Shoshone County, Idaho, August 31, 1981, copies of the proofs of labor for the MX group of claims I MC 53035 through I MC 53051, were sent to BLM. Appellant had no intention of abandoning the claims and contends it complied with the recordation requirements, but it has no proof of mailing the instruments.

BLM asserts it has no record of the 1981 proofs of labor for the MX claims, and has searched through all other files of mining claims in which appellant may have an interest.

[1] Under section 314 of FLPMA, the owner of a mining claim located after October 21, 1976, must file a notice of intention to hold the claim or evidence of the performance of assessment work on the claim prior to December 31 of each year following the calendar year in which the claim was located. This requirement is mandatory, and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void. The recordation requirement of section 314 of FLPMA that evidence of assessment work or a notice of intention to hold be filed both in the office where the notice of location is recorded and in the proper office of BLM is mandatory, not discretionary. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The purpose of section 314(a) of FLPMA is not to ensure that assessment work is done on the mining claim but rather to ensure that there

¹/ Appellant stated that it has abandoned the MX 10 fraction, MX 12 fraction, MX 13, MX 14 fraction, and MX 16 fraction mining claims, I MC 53044, I MC 53046, I MC 53047, I MC 53048, and I MC 53050.

is a record of continuing activity on the claim so that the Federal Government will know which mining claims on Federal lands are being maintained, and which have been abandoned. See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981); Western Mining Council v. Watt, 643 F.2d 618 (9th Cir. 1981). The statute expressly requires that a mining claimant file the instrument recorded in the local state office, whether proof of labor or notice of intention to hold the claim, in the proper office of BLM. Where, as in this case, the 1981 proof of labor was not submitted to BLM, there was no discretion under the statute for BLM to determine that the claims had not been abandoned. This Board has no authority to excuse the statutory consequences. See Lynn Keith, *supra*; Glenn J. McCrorey, 46 IBLA 355 (1980). As the Board stated in Lynn Keith:

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

52 IBLA at 196, 88 I.D. at 371-72.

Despite appellant's statement that the documents were properly and timely mailed, the regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 3833.1-2(a). BLM has reported that it has no record the proofs of labor being received, after searching in every case file pertinent to this appellant.

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Anne Poindexter Lewis
Administrative Judge